

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VELMA DRAKE,

Plaintiff,

Hon. Richard Alan Enslen

v.

Case No. 1:03-cv-606

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

ORDER

This matter is before the Court on Plaintiff's Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b). Plaintiff's counsel seeks \$14,588.00 in fees. Defendant has not opposed the motion. As discussed below, counsel's motion is granted in part and denied in part.

In a decision dated March 10, 2005, the Court determined that the Commissioner's decision was not supported by substantial evidence and, furthermore, that there existed compelling evidence of Plaintiff's disability. Accordingly, this matter was remanded to the Commissioner for an award of benefits. Counsel subsequently submitted the present motion which Defendant has not opposed.

Counsel seeks an award of fees and costs as part of the contingent fee arrangement into which she and Plaintiff entered. According to this fee arrangement, Plaintiff agreed to pay counsel "a fee equal to 25% of the past-due benefits accrued on my claim." (Fee Agreement 1.)

The Social Security Act provides that "whenever a court renders a judgment favorable to a claimant...who was represented before the court by an attorney, the court may determine and allow as part

of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment.” 42 U.S.C. § 406(b)(1)(A). Twenty-five percent of Plaintiff’s past-due benefits award equals \$14,588.25.

While counsel’s fee agreement entitles her to 25 percent of Plaintiff’s past-due benefits, this amount must also be reduced by \$4,746.82 (the amount counsel was previously awarded pursuant to the Equal Access to Justice Act). *See Gisbrecht v. Comm’r of Soc. Sec.*, 535 U.S. 789, 795-96 (2002) (where counsel receives a fee award pursuant to both the EAJA and 42 U.S.C. § 406(b), she must “[r]efund to the claimant the amount of the smaller fee”).

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff’s Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) (Dkt. No. 25) is **GRANTED IN PART** and counsel is hereby awarded Nine Thousand Eight Hundred Forty-One Dollars and Forty-Three Cents (\$9,841.43) in fees and costs.

DATED in Kalamazoo, MI:
December 20, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE